

REFERENCE TITLE: public records; electronic format

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1248

Introduced by
Senator Paton

AN ACT

AMENDING SECTIONS 39-121.01 AND 41-1376.01, ARIZONA REVISED STATUTES;
RELATING TO PUBLIC RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 39-121.01, Arizona Revised Statutes, is amended to read:

39-121.01. Definitions: maintenance of public records; copies, printouts or photographs of public records; examination and furnishing of public records

A. In this article, unless the context otherwise requires:

1. "METADATA" MEANS ELECTRONIC DATA DESCRIBING THE HISTORY, TRACKING AND MANAGEMENT OF AN ELECTRONIC DOCUMENT.

1. 2. "Officer" means any person elected or appointed to hold any elective or appointive office of any public body and any chief administrative officer, head, director, superintendent or chairman of any public body.

2. 3. "Public body" means ~~the~~ THIS state, any county, city, town, school district, political subdivision or tax-supported district in ~~the~~ THIS state, any branch, department, board, bureau, commission, council or committee of the foregoing, and any public organization or agency, supported in whole or in part by monies from ~~the~~ THIS state or any political subdivision of ~~the~~ THIS state, or expending monies provided by ~~the~~ THIS state or any political subdivision of ~~the~~ THIS state.

B. All officers and public bodies shall maintain all records, including records as defined in section 41-1350, reasonably necessary or appropriate to maintain an accurate knowledge of their official activities and of any of their activities which THAT are supported by monies from the THIS state or any political subdivision of the THIS state.

C. Each public body shall be responsible for the preservation, maintenance and care of that body's public records, and each officer shall be responsible for the preservation, maintenance and care of that officer's public records. It shall be the duty of each such body to carefully secure, protect and preserve public records from deterioration, mutilation, loss or destruction, unless disposed of pursuant to sections 41-1347 and 41-1351.

D. Subject to section 39-121.03:

1. Any person may request to examine or be furnished copies, printouts or photographs of any public record, INCLUDING RECORDS THAT ARE MAINTAINED IN AN ELECTRONIC FORMAT, during regular office hours or may request that the custodian mail a copy of any public record not otherwise available on the public body's ~~web-site~~ WEBSITE to the requesting person. The custodian may require any person requesting that the custodian mail a copy of any public record to pay in advance for any copying and postage charges. The custodian of ~~such~~ THE records shall promptly furnish ~~such~~ THE copies, printouts or photographs OF ANY PUBLIC RECORD, INCLUDING RECORDS THAT ARE MAINTAINED IN AN ELECTRONIC FORMAT, and may charge a fee NOT TO EXCEED ACTUAL COPYING COSTS if the facilities are available, except that public records for purposes listed in section 39-122 or 39-127 shall be furnished without charge.

2. If requested, the custodian of the records of an agency shall also furnish an index of records or categories of records that have been withheld

1 and the reasons the records or categories of records have been withheld from
2 the requesting person. The custodian shall not include in the index
3 information that is expressly made privileged or confidential in statute or a
4 court order. This paragraph shall not be construed by an administrative
5 tribunal or a court of competent jurisdiction to prevent or require an order
6 compelling a public body other than an agency to furnish an index. For the
7 purposes of this paragraph, "agency" has the same meaning prescribed in
8 section 41-1001, but does not include the department of public safety, the
9 department of transportation motor vehicle division, the department of
10 juvenile corrections and the state department of corrections.

11 3. If the custodian of a public record does not have facilities for
12 making copies, printouts or photographs of a public record ~~which THAT~~ a
13 person has a right to inspect, ~~sueh THE~~ person shall be granted access to the
14 public record for the purpose of making copies, printouts or
15 photographs. The copies, printouts or photographs shall be made while the
16 public record is in the possession, custody and control of the custodian of
17 the public record and shall be subject to the supervision of ~~sueh THE~~
18 custodian.

19 4. IF REQUESTED, A PUBLIC BODY SHALL PROVIDE COPIES OF PUBLIC RECORDS
20 IN THE FORMAT REQUESTED IF THE PUBLIC BODY MAINTAINS THE PUBLIC RECORDS IN
21 THAT FORMAT. IF REQUESTED AND IF AVAILABLE, A PUBLIC BODY SHALL PROVIDE
22 METADATA THAT IS REASONABLY NECESSARY TO ESTABLISH A PUBLIC RECORD'S
23 AUTHENTICITY OR SCOPE. IF REQUESTED, A PUBLIC BODY MAY CONVERT PAPER PUBLIC
24 RECORDS TO AN ELECTRONIC OR DIGITAL FORMAT.

25 E. Access to a public record is deemed denied if a custodian fails to
26 promptly respond to a request for production of a public record or fails to
27 provide to the requesting person an index of any record or categories of
28 records that are withheld from production pursuant to subsection D, paragraph
29 2 of this section.

30 Sec. 2. Section 41-1376.01, Arizona Revised Statutes, is amended to
31 read:

32 41-1376.01. Additional powers and duties; definitions

33 A. In addition to the powers and duties prescribed in section 41-1376,
34 the ombudsman-citizens aide shall appoint two assistants, one of whom shall
35 be an attorney, to help the ombudsman-citizens aide investigate complaints
36 relating to public access laws involving an agency. The assistants shall
37 train public officials and educate the public on the rights of the public and
38 the responsibilities of public agencies under the public access laws. The
39 assistants shall prepare interpretive and educational materials and programs
40 in cooperation with the ombudsman-citizens aide and shall distribute to
41 elected or appointed public officials the public access laws and educational
42 materials concerning the public access laws.

43 B. The annual report of the ombudsman-citizens aide shall include the
44 following information about public access:

1 1. The number of inquiries that are received from the public, the
2 media and government agencies.

3 2. The number of inquiries that are received about state agencies,
4 county agencies, city or town agencies, school districts and other local
5 jurisdictions.

6 3. The number of requests that are received concerning public records
7 and public meetings.

8 4. The number of investigations that are conducted and the results of
9 the investigations.

10 C. For investigations made pursuant to this section, the
11 ombudsman-citizens aide may:

12 1. Make inquiries and obtain information considered necessary subject
13 to the restrictions in section 41-1377.

14 2. Enter without notice to inspect agency premises with agency staff
15 on the premises.

16 3. Hold hearings.

17 4. Notwithstanding any other law, have access to all agency records,
18 including confidential records, except:

19 (a) Sealed court records without a subpoena.

20 (b) Active criminal investigation records.

21 (c) Records that could lead to the identity of confidential police
22 informants.

23 (d) Attorney work product and communications that are protected under
24 attorney-client privilege.

25 (e) Confidential information as defined in section 42-2001, except as
26 provided in section 42-2003, subsection M.

27 (f) Information protected by section 6103(d), 6103(p) or 7213 of the
28 internal revenue code.

29 (g) Confidential information relating to section 36-2903, subsection
30 I, section 36-2917, section 36-2932, subsection F or section 36-2972.

31 (h) Confidential information relating to sections 36-507, 36-509 and
32 36-2220.

33 (i) Documents that are protected by section 214 of the critical
34 infrastructure information act of 2002 (6 United States Code section ~~133a~~
35 133(a)) or by 49 Code of Federal Regulations part 1520.

36 (j) Information that is protected by section 214 of the critical
37 infrastructure information act of 2002 (6 United States Code section ~~133a~~
38 133(a)) or 49 Code of Federal Regulations part 1520 or critical
39 infrastructure information as defined ~~by~~ IN section 41-1801 on government
40 owned facilities that are classified as critical infrastructure by the
41 federal government or as defined ~~by~~ IN section 41-1801.

42 5. Issue subpoenas if necessary to compel the attendance and testimony
43 of witnesses and the production of books, records, documents and other
44 evidence to which the ombudsman-citizens aide may have access pursuant to
45 paragraph 4 of this subsection. The ombudsman-citizens aide may only issue a

1 subpoena if the ombudsman-citizens aide has previously requested testimony or
2 evidence and the person or agency to which the request was made has failed to
3 comply with the request in a reasonable amount of time.

4 D. It is contrary to the public policy of this state for any agency or
5 any individual acting for an agency to take any adverse action against an
6 individual in retaliation because the individual cooperated with or provided
7 information to the ombudsman-citizens aide or the ombudsman-citizens aide's
8 staff.

9 E. For the purposes of this section:

10 1. "Agency" has the same meaning prescribed in section 41-1371 but
11 includes a public body as defined in section 39-121.01, ~~subsection A,~~
12 ~~paragraph 2.~~

13 2. "Public access laws" means:

14 (a) Title 39, chapter 1.

15 (b) Title 38, chapter 3, article 3.1.

16 (c) Any other state statute or rule governing access to public
17 meetings or public records.